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W.P(C)No. 657 OF 1995

ITEM No.1 Part-heard

Court No. 6

SECTION PIL
XIV & III
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(Civil) No.657/1995

RESEARCH FOUNDN. FOR SCIENCE

Petitioner (s)

VERSUS

U O I & ANR.

Respondent (s)

With

SLP(C)No.16175/1997,C.A.No.7660/1997

(With Appln(s). for directions & impleading party & directions &
exemption from filing O.T.& directions & office report)
(For final disposal)

Date : 23/09/2003 These Petitions were called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE B.N. AGRAWAL

For the parties : M/s. Sanjay Parikh,Abinash K.Misra,
AN Singh,Advs.

Ms.B.Vijayalakshmi Menon,Adv.

For UOI Mr.PP Malhotra,Sr.Adv.
M/s Sanjay R.Hegde,Rajiv Nanda,SN Terdol,
Anil K.Mishra,Advs.

For JN Port Trust Mr.Altaf Ahmad,ASG
Mr.Ajay Sharma,Adv.

M/s ADN Rao,P.Parmeswaran,
BK Prasad,A.Subba Rao,Ajay Sharma,Advs.

Mr. Anil Kumar Jha, Adv.

For CPCB Mr. Vijay Panjwani,Adv.

Mrs Manik Karanjawala,Adv.

M/s K.B. Rohtagi,Aparna R.Jain,
Mahesh Kasana,Advs.

For Maharashtra PCB M/s R.C. Verma,Mukesh Verma,
Manish Shanker,Advs.

M/s Ashok Mathur,Rajesh Pathak,Advs.
Mr. Shakil Ahmed Syed,Adv.

For UP PCB M/s. Pradeep Misra,T.Mahipal,Advs.

For Tripura M/s. Gopal Singh,Rajiv Mohapatra,Navin Prakash,Anurag Sharma,Advs

For Manipur M/s.Khwairakpam Nobin Singh,M.Gireesh Kumar,Advs.

For Bihar M/s Sunita R.Singh, B.B. Singh,Advs.

For Arunachal P.PCB M/s. Anil Shrivastav,Jyoti Dutt,Advs.
Mr. Anil Kumar Tandale,Adv.
Mr. Rakesh K. Sharma,Adv.
Mr. Radha Shyam Jena,Adv.
Mrs Urmila Sirur,Adv.
Ms. Sushma Suri,Adv.
Mrs Anil Katiyar,Adv.

For West Bengal M/s G.Biswal, JR Das, S.Mishra,
Dilip K.Sinha,Advs.for
M/s Sinha & Das

For Mumbai Port Trust M/s JB Dadachanji,Buddy A.Rangnadhan,Advs.for
M/s J.B. Dadachanji & Co.

For Assam M/s Krishna Sarma,Asha G.Nair,
VK Sidatharan,Ng.JR Luwang,Advs.for
M/s Corporate Law Group

For Rajasthan M/s Ranji Thomas,Bharati Upadhyay,AK Shukla,
VN Raghupathy,Advs.

For Orissa PCB M/s Janaranjan Das,G.Biswal,
S.Mishra,Moushami Gahlot,Advs.
Mr.Jayant Bhushan,Adv.
Mr.KK Gupta,Adv.
Mr.Pramod Dayal,Adv.
Mr.BV Balaram Das,Adv.
Mr.Shail Kumar Dwivedi,Adv.

For A.P. M/s TV Ratnam,K.Subba Rao,Advs.

For Maharashtra M/s SS Shinde,Mukesh K.Giri,Advs.

For Meghalaya Mr.Ranjan Mukherjee,Adv.

For Sikkim M/s A.Mariarputham,Aruna Mathur,
Anurag D.Mathur,Advs.for
M/s Arputham Aruna & Co.

For Gujarat,Mizoram,
GPCB M/s H.Wahi,Aruna Gupta,Monika Bapna,
Sadhna Sandhu,Advs.

For Nagaland M/s VD Khanna,SK Shandilya,V.Hazarika,
Sumita Hazarika,Kamal Shankar,Advs.
M/s Neeraj K.Jain,Bharat Singh,
RS Yadav,Advs.

For Goa Ms.A.Subhashini,Adv.

For Pondicherry Mr.R.Mohan,Sr.Adv.

& W.Bengal PCB Mr.VG Pragasam,Adv.

For Karnataka PCB M/s Mahesh Agrawal,Rishi Agrawal,
EC Agrawala,Manu Krishnan,Advs.

For H.P. MrJS Attri,AAG
Mr.Vineet Sinha,Adv.

For M.P. PCB M/s SK Agnihotri,Sakesh Kumar,AK Pandey,
Yogmaya, Rohit K.Singh,Advs.

Mrs.D.Bharathi Reddy,Adv.

For U.P. Mr.Subodh Markandeya,Sr.Adv.
M/s Kamlendra Mishra,
Manoj Mishra,Rajeev K.Dubey,Advs.

M/s Sushil K.Jain,RK Joshi,AP Dhamija,
Pradeep Aggarwal,A.Mishra,Anjali Doshi,
Ruchi Kohli,LP Singh,AP Jain,Advs.

For T.Nadu M/s PN Ramalingam,V.Balaji,Advs.

UPON hearing the counsel the Court made the following
O R D E R

After hearing Mr.Sanjay Parikh, learned counsel for the petitioner and Mr.ADN Rao, learned counsel for the Union of India, the Court made the following order:

While considering the recommendations regarding the changes required to be made to regulate the functioning of Units handling hazardous waste under the category of safeguards in the import of hazardous waste and the suggestion about deletion of sub-rule (3) of Rule 12 of Hazardous Waste Rules, as amended in May, 2003, our attention has been drawn to Schedule-3. Schedule-3, in turn, refers to Rule 3(14)(c) and Rule 12(a). Rule 3(14) defines "hazardous waste". Rule 3(14)(c) reads as under:

"Rule 3:

Sub-rule (14)(c): Wastes listed in Lists 'A' and 'B' of Schedule-3 (Part-A) applicable only in case(s) of import or export of hazardous wastes in accordance with Rules 12, 13 and 14 if they possess any of the hazardous characteristics listed in Part-B of Schedule-3.

Explanation: For the purposes of this clause:

(i) all wastes mentioned in column (3) of Schedule-1 are hazardous wastes irrespective of concentration limits given in Schedule-2 except as otherwise indicated and Schedule-2 shall be applicable only for wastes or waste constituents not covered under column(3) of Schedule-1;

(ii) Schedule-3 shall be applicable only in case(s) of import or export."

In the Notification dated 23rd May, 2003, there is no Rule 12(a). The apprehension expressed is that Rule 12(3) on account of its ambiguity may be abused and under garb of the said Rule the raw material of banned items may be imported. Further, Mr. Parikh contends that there does not appear to be any necessity of sub-rule(3) in view of Rule 12(1). Let Mr. ADN. Rao take instructions and file affidavit clarifying the position. If necessary, requisite corrigendum should be issued.

Rules 13, 14 read with definition of 'export' 'exporter' and 'import' 'importer' may lead to some confusion on account of certain apparent ambiguities. Let Government of India look into it and file an affidavit.

Sub-rule (12) of Rule 19 reads as under:-

"In case of units registered with the Ministry of Environment and Forests or the Central Pollution Control Board for items placed under "free category" in Notification nos.22(RE-99) 1997-2002 dated 30th July, 1999; 26(RE-99) 1997-2002 dated 10th September, 1999; 38 (RE-2000) 1997-2002 dated 16th October, 2000 and 6(RE-2001) dated 31st March, 2001 issued by the Directorate General of Foreign Trade and other similar notifications issued based on the advice of Ministry of Environment and Forests, prior import permission from that Ministry shall not be required." Rule 19 deals with procedure for registration and renewal of registration of recyclers and re-

refiners.

Sub-rule (1) requires every person desirous of recycling or re-refining non-ferrous metal wastes as specified in Schedule 4 or used oil or waste oil to register himself with the Central Pollution Control Board. There are two provisos to sub-rule (1). The said provisos provide the cases where registration is not required. Apparently, it seems difficult to comprehend the reason for inserting sub-rule (2) in Rule 19 which provides for registration and renewal and sub-rule (12) providing for dispensing with prior import permission. Prima-facie we hope that the intention is not to permit banned items or hazardous waste items under the guise of sub-rule (12) of Rule 19. It can have the effect of setting at naught Rule 13. This aspect too requires to be examined by Ministry of Environment & Forests and affidavit filed. The matter remains part-heard.

[Naresh Kumar] [S. Thapar][VP Tyagi]
AR-cum-PS PS to Registrar Court Master

24/9/2003

ITEM No.1 Part-heard

Court No. 5

SECTION PIL

XIV & III

A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(Civil) No.657/1995

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SLP(C)No.16175/1997,C.A.No.7660/1997

(With Appln(s). for directions & impleading party & directions & exemption from filing O.T.& directions & office report)

(For final disposal)

Date : 24/09/2003 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE B.N. AGRAWAL

For the parties : M/s. Sanjay Parikh, Abinash K. Misra,
AN Singh, Advs.

Ms. B. Vijayalakshmi Menon, Adv.

For UOI Mr. PP Malhotra, Sr. Adv.
M/s Sanjay R. Hegde, Rajiv Nanda, SN Terdol,
Anil K. Mishra, Advs.

For JN Port Trust Mr. Altaf Ahmad, ASG
Mr. Ajay Sharma, Adv.

M/s ADN Rao, P. Parmeswaran,
BK Prasad,

Mr. A. Subba Rao, Adv.

Mr. Anil Kumar Jha, Adv.

For CPCB Mr. Vijay Panjwani, Adv.

Mrs Manik Karanjawala, Adv.

M/s K.B. Rohtagi, Aparna R. Jain,
Mahesh Kasana, Advs.

For Maharashtra PCB M/s R.C. Verma, Mukesh Verma,
Manish Shanker, Advs.

M/s Ashok Mathur, Rajesh Pathak, Advs.
Mr. Shakil Ahmed Syed, Adv.

For UP PCB M/s. Pradeep Misra, T. Mahipal, Advs.

For Tripura M/s. Gopal Singh, Rajiv Mohapatra, Navin Prakash, Anurag Sharma, Advs

For Manipur M/s. Khwairakpam Nobin Singh, M. Gireesh Kumar, Advs.

For Bihar M/s Sunita R. Singh, B.B. Singh, Advs.

For Arunachal P. PCB M/s. Anil Shrivastav, Jyoti Dutt, Advs.

Mr. Anil Kumar Tandale, Adv.

Mr. Rakesh K. Sharma, Adv.

Mr. Radha Shyam Jena, Adv.

Mrs Urmila Sirur, Adv.

Ms. Sushma Suri, Adv.

Mrs Anil Katiyar, Adv.

For West Bengal M/s G. Biswal, JR Das, S. Mishra,
Dilip K. Sinha, Advs. for

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For Mumbai Port Trust M/s JB Dadachanji, Buddy A. Rangnadhan, Advs. for
M/s J.B. Dadachanji & Co.

For Assam M/s Krishna Sarma, Asha G. Nair,
VK Sidatharan, Ng. JR Luwang, Advs. for
M/s Corporate Law Group

For Rajasthan M/s Ranji Thomas, Bharati Upadhyay, AK Shukla,
VN Raghupathy, Advs.

For Orissa PCB M/s Janaranjan Das, G. Biswal,
S. Mishra, Moushami Gahlot, Advs.

Mr. Jayant Bhushan, Adv.

Mr. KK Gupta, Adv.

Mr. Pramod Dayal, Adv.

Mr. BV Balaram Das, Adv.

Mr. Shail Kumar Dwivedi, Adv.

For A.P. M/s TV Ratnam, K. Subba Rao, Advs.

For Maharashtra M/s SS Shinde, Mukesh K. Giri, Advs.

For Meghalaya Mr. Ranjan Mukherjee, Adv.

For Sikkim M/s A. Mariarputham, Aruna Mathur,
Anurag D. Mathur, Advs. for
M/s Arputham Aruna & Co.

For Gujarat, Mizoram, GPCB M/s H. Wahi, Aruna Gupta, Monika Bapna,
Sadhna Sandhu, Advs.

For Nagaland M/s VD Khanna, SK Shandilya, V. Hazarika,
Sumita Hazarika, Kamal Shankar, Advs.

M/s Neeraj K. Jain, Bharat Singh,
RS Yadav, Advs.

For Goa Ms. A. Subhashini, Adv.

For Pondicherry Mr. R. Mohan, Sr. Adv.
& W. Bengal PCB Mr. VG Pragasam, Adv.

For Karnataka PCB M/s Mahesh Agrawal, Rishi Agrawal,
EC Agrawala, Manu Krishnan, Advs.

For H.P. MrJS Attri, AAG
Mr. Vineet Sinha, Adv.

For M.P. PCB M/s SK Agnihotri, Sakesh Kumar, AK Pandey,
Yogmaya, Rohit K. Singh, Advs.

Mrs. D. Bharathi Reddy, Adv.

For U.P. Mr. Subodh Markandeya, Sr. Adv.
M/s Kamlendra Mishra,
Manoj Mishra, Rajeev K. Dubey, Advs.

M/s Sushil K. Jain, RK Joshi, AP Dhamija,
Pradeep Aggarwal, A. Mishra, Anjali Doshi,
Ruchi Kohli, LP Singh, AP Jain, Advs.

For T. Nadu M/s PN Ramalingam, V. Balaji, Advs.

UPON hearing the counsel the Court made the following
O R D E R

After hearing learned counsel for the parties, the Court made the following order:
In respect of adequate facilities of testing at the laboratories at the gateway points, i.e., Ports, ICDs Customs Areas, for testing potentially hazardous wastes and recyclables and the said laboratories being manned by the trained staff, the stand of MOEF is that the customs labs are being upgraded. Mr.ADN Rao seeks 12 months time to upgrade the labs. Allowing the said request, but directing quarterly reports to be filed in this court detailing the progress made, the labs as suggested should be upgraded and manned staff officers posted within the period of 12 months. Compliance report shall be filed soon after expiry of 12 months. Meanwhile, the test shall be conducted by accredited laboratories certified by CPCB.

CPCB, Mr.Panjwani states, is imparting periodical training to Customs and Port officials. The document prepared by Dr.KR Ranganathan, a member of HPC, on the aspect of testing method for analysis of hazardous wastes, instrumentation and training requirements shall form part of the training imparted by CPCB.

RE: Customs Act:

Section 11 of the Customs Act, 1962 empowers the Central Government to prohibit either absolutely or subject to such conditions as may be specified in the Notification the import and export of the goods if satisfied that it is necessary so to do for any of the purposes stated in sub-section (2). It is implicit that if import is in contravention of any law for the time being in force, such import is required to be prohibited.

The import of 29 items has already been prohibited under Schedule-8 of the Hazardous Waste Rules as amended in May, 2003. We see no reason why Notification under Section 11 prohibiting the import of the said 29 items shall not be issued forthwith. We direct the Central Government to issue such a Notification without any further delay.

Basel Convention has banned 76 items. We are contemplating issue of directions to Ministry of Environment and Forests to examine the remaining items. It is implicit that if more items are banned, the corresponding Notification shall be issued by the Central Government under Section 11 of the Customs Act.

The HW Rules allow import of certain items subject to fulfillment of conditions. The requisite notification shall be issued making the compliance of the said conditions mandatory before the imported consignment is cleared.

RE: Major Port Trust Act:

The Competent Authority, while disposing of hazardous waste, in exercise of power under Section 62 of the Major Port Trust Act, 1963, is directed to ensure that the Hazardous Waste Rules, as amended up to date, shall be complied with, in particular, Rule 19 and 20 thereof.

RE: Foreign Trade (Development & Regulation) Act, 1992:

The Export and Import Policy (Exim Policy) issued from time to time, under the Foreign Trade (Development and Regulations) Act, 1992, inter alia, sets out the goods, import whereof is prohibited. We direct the Central Government that the said policy shall also correspond with the Hazardous Waste Rules, as amended from time to time, which means that if import of any item is prohibited under Hazardous Waste Rules, it shall be reflected in the prevalent Exim Policy.

For design and setting up of disposal facility as provided in Rule 8-A of HW (M & H) Rules, the Criteria for Hazardous Waste Landfills published by CPCB in February, 2001 and the Manual for Design, Construction & Quality Control of Liners and Covers for Hazardous Waste Landfills published in December 2002 shall be followed and adhered to. Alongwith the affidavit of Mr.M.Subbba Rao, filed on 13th September, 2003, Annexure II sets out status of hazardous waste disposal sites. According to the said Annexure, 89 sites were identified out of which 30 were notified. Mr.ADN Rao, on instructions, states that out of 30, 11 landfills are ready and operational -- two in Maharashtra, one in Andhra Pradesh and eight in Gujarat and that these landfills are in accord with the Criteria and Manual aforesaid. The steps shall be taken to expedite the completion of the remaining landfills. In this view, steps should be taken of shifting of hazardous waste from wherever it is permissible to these landfills. The transport of hazardous waste would be in accordance with Rule 7 and the Guidelines issued by CPCB from time to time. Mr.Panjwani states that the guidelines are ready. Let the same be issued forthwith.

MONITORING :

The CPCB should issue the requisite guidelines to be followed for the purpose of upkeep of the disposal sites.

The CPCB shall issue guidelines to be followed by all concerned including SPCB and the operators of disposal sites for the proper functioning and upkeep of the said sites.

RE: Impact of Hazardous Waste on Worker's Health:

We have considered the suggestion of HPC under term of reference no.4 relating to impact of Hazardous Waste on Worker's Health. Having regard to the recommendations and submissions made by the learned counsel we direct the Ministry of Labour and Ministry of Industry to constitute a special committee to examine the matter and enumerate medical benefits which may be provided to the workers having regard to the occasional hazard as also keeping in view the question of health of the workers and the compensation which may have to be paid to them. The Committee while examining the recommendations, shall also keep in view the judgment of this Court in Consumer Education and Research Centre vs. Union of India (1995 (3) SCC 42). The report of the special committee shall be submitted within a period of four months.

The matter remains part-heard.

[Naresh Kumar][S.Thapar] [VP Tyagi]
AR-cum-PSPS to Registrar Court Master